

WOLF, GREENFIELD & SACKS, P.C.

Michael A. Albert (Admitted *Pro Hac Vice*)

Mass. B.B.O No. 558566

malbert@wolfgreenfield.com

Hunter D. Keeton (Admitted *Pro Hac Vice*)

Mass. B.B.O No. 660609

hkeeton@wolfgreenfield.com

Stuart V. C. Duncan Smith (Admitted *Pro Hac Vice*)

Mass. B.B.O No. 687976

sduncansmith@wolfgreenfield.com

600 Atlantic Avenue

Boston, Massachusetts, 02210

Tel: (617) 646-8000 Fax: (617) 646-8646

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

Victor M. Felix (SBN: 179622)

victor.felix@procopio.com

525 B Street, Suite 2200

San Diego, California, 92101

Tel: (619) 515-3229 Fax: (619) 744-5409

Attorneys for Defendant and Counter Claimant Acacia Communications, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**ViaSat, Inc.,**

*a Delaware corporation,*

Plaintiff

and Counter Defendant,

v.

**Acacia Communications, Inc.,**

*a Delaware corporation,*

Defendant

and Counter Claimant

Case No. 3:16-cv-00463-BEN-JMA

**ACACIA COMMUNICATIONS,  
INC.'S MOTION TO FILE UNDER  
SEAL DOCUMENTS ASSOCIATED  
WITH ITS MOTION FOR  
SUMMARY JUDGMENT  
REGARDING NO LIABILITY**

Judge: Hon. Roger T. Benitez

Mag. Judge: Hon. Jan M. Adler

Date: February 26, 2018

Time: 10:30 a.m.

Courtroom: 5A

Pursuant to Federal Rule of Civil Procedure 26(c), Local Rule 79.2(c), ECF Administrative Policies and Procedures 2(j), the Stipulated Protective Order § 1 (Dkt. No. 29), and Magistrate Judge Adler's Chamber Rules at 3, defendant and counter claimant Acacia Communications, Inc. ("Acacia") submits this motion to file under seal portions of the Memorandum of Points and Authorities in Support of Acacia Communication, Inc.'s Motion for Summary Judgment Regarding No Liability ("Acacia's Memorandum") and certain of the exhibits attached to the Declaration of Stuart V. C. Duncan Smith in support of that motion.

### **ARGUMENT**

Certain limited portions of Acacia's Memorandum and certain of the exhibits attached to the Declaration of Stuart V. C. Duncan Smith in support of that motion contain confidential information that one or both of the parties have designated as Confidential or Highly Confidential – Attorneys' Eyes Only under the Stipulated Protective Order (Dkt. No. 29), disclosure of which would harm the competitive standing of the parties and could be used to the parties' competitive disadvantage outside of this case.

Acacia seeks to seal the following documents:

- a. Portions of Acacia's Memorandum, which contains information that ViaSat and Acacia have designated as Highly Confidential – Attorneys' Eyes Only. These portions contain confidential business and financial information of both ViaSat and Acacia regarding product sales, royalty and other payments, contractual obligations, and the value of the technology and products at issue in this case.
- b. Exhibit 2 attached thereto, which is a copy of the Expert Report of Stephen D. Prowse, Ph.D., CFA, dated October 27, 2017, with Corrected Designation dated October 30, 2017, and contains information that ViaSat has designated as Highly Confidential – Attorneys' Eyes Only and information that is Third Party Highly Confidential. Exhibit 2 contains

1 confidential business and financial information from both parties regarding  
2 product sales, royalty and other payments, and the value of the technology  
3 and products at issue in this case. It also cites to documents produced by  
4 third parties in the course of this litigation.

- 5 c. Exhibit 5 attached thereto, which is a copy of Cord, Aurora, Gemini, and  
6 Polo Payments, entered as Deposition Exhibit No. 101 with attached letter  
7 from Amy M. Bailey on October 25, 2017 resending the document with a  
8 corrected confidentiality designation, and contains information that ViaSat  
9 has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 5  
10 contains confidential financial information related to payments to ViaSat for  
11 the Cord project and from third parties related to various other projects.
- 12 d. Exhibit 6 attached thereto, which is a copy of an email from Russell Fuerst,  
13 dated May 25, 2009, entered as Deposition Exhibit No. 347, and contains  
14 information that Acacia has designated as Highly Confidential – Attorneys’  
15 Eyes Only. Exhibit 6 is a Rough Order of Magnitude Schedule, Budgetary,  
16 and Resource Estimate provided by ViaSat and contains business, financial,  
17 and technical information that ViaSat identified as confidential.
- 18 e. Exhibit 8 attached thereto, which is a copy of a copy of the Rebuttal Expert  
19 Report Regarding Damages of Brent K. Bersin, dated November 21, 2017,  
20 and contains information that Acacia has designated as Highly Confidential  
21 – Attorneys’ Eyes Only. Exhibit 8 contains discussion of business and  
22 financial information that Acacia has identified as confidential including  
23 information regarding royalties paid by Acacia and sales of Acacia’s accused  
24 products.
- 25 f. Exhibit 13 attached thereto, which is a copy of an email from Christian  
26 Rasmussen to Russell Fuerst, dated November 19, 2009, with Exhibit A to  
27 the IP Core Development and License Agreement between ViaSat and  
28 Acacia attached, and contains information that Acacia has designated as

1 Highly Confidential – Attorneys’ Eyes Only. Exhibit 13 contains technical  
2 information from both parties that Acacia has identified as confidential.

3 g. Exhibit 14 attached thereto, which is a copy of the Rebuttal Report of  
4 Professor Ivan Djordjevic, Ph.D., dated November 21, 2017, and contains  
5 information that ViaSat has designated as Highly Confidential – Attorneys’  
6 Eyes Only. Exhibit 14 contains discussion of Acacia’s alleged trade secrets  
7 and ViaSat’s accused products as well as technical information that ViaSat  
8 has identified as confidential.

9 h. Exhibit 15 attached thereto, which is a copy of the Expert Report of Dr.  
10 Alexander Vardy, dated November 21, 2017, and contains information that  
11 Acacia has designated as Highly Confidential – Attorneys’ Eyes Only.  
12 Exhibit 15 contains discussion of ViaSat’s alleged trade secrets and Acacia’s  
13 accused products as well as technical information that Acacia has identified  
14 as confidential.

15 i. Exhibit 16 attached thereto, which is a copy of the Opening Expert Report  
16 of Professor Krishna Narayanan, Ph.D., dated October 27, 2017, and  
17 contains information that ViaSat has designated as Highly Confidential –  
18 Attorneys’ Eyes Only. Exhibit 16 contains discussion of ViaSat’s alleged  
19 trade secrets and Acacia’s accused products as well as technical information  
20 that ViaSat has identified as confidential.

21 j. Exhibit 17 attached thereto, which is a copy of excerpts of the condensed  
22 transcript of the August 10, 2017 deposition of Gary D. Martin, Ph.D., and  
23 contains information that Acacia has designated as Highly Confidential –  
24 Attorneys’ Eyes Only. Exhibit 17 contains discussion of ViaSat’s alleged  
25 trade secrets and Acacia’s accused products as well as technical and business  
26 information that Acacia has identified as confidential.

27 k. Exhibit 18 attached thereto, which is a copy of excerpts of the condensed  
28 transcript of the August 9, 2017 deposition of Pierre A. Humblet, Ph.D., and

contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 18 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products and their design as well as technical and business information that Acacia has identified as confidential.

- l. Exhibit 19 attached thereto, which is a copy of excerpts of the condensed transcript of the October 11, 2017 deposition of Christian J. Rasmussen, Ph.D., and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 19 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as technical and business information that Acacia has identified as confidential.
- m. Exhibit 20 attached thereto, which is a copy of excerpts of the condensed transcript of the September 28, 2017 deposition of Bhupendra Shah, and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 20 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as technical, business, and financial information that Acacia has identified as confidential.
- n. Exhibit 21 attached thereto, which is a copy of ViaSat’s Amended Trade Secret Identification, dated October 25, 2017, and contains information that ViaSat has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 21 contains discussion of ViaSat’s alleged trade secrets which constitute technical information that ViaSat has identified as confidential.
- o. Exhibit 22 attached thereto, which is a copy of excerpts of the condensed transcript of the September 12, 2017 deposition of Sameep Dave with attached errata sheet, and contains information that ViaSat has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 22 contains discussion of ViaSat’s alleged trade secrets as well as business and technical information that ViaSat has identified as confidential.

- 1 p. Exhibit 23 attached thereto, which is a copy of excerpts of the condensed  
2 transcript of the September 13, 2017 deposition of Lawrence Esker, and  
3 which ViaSat has designated Highly Confidential – Attorneys’ Eyes Only.  
4 Exhibit 23 contains discussion of ViaSat’s alleged trade secrets as well as  
5 technical and business information that ViaSat has identified as confidential.
- 6 q. Exhibit 24 attached thereto, which is a copy of the Expert Report of Dr.  
7 Richard W. Koralek, dated November 21, 2017, and contains information  
8 that ViaSat and Acacia have designated as Confidential Source Code –  
9 Attorneys’ Eyes Only Information. Exhibit 24 contains discussion of  
10 ViaSat’s alleged trade secrets and Acacia’s accused products as well as  
11 technical information that ViaSat and Acacia have identified as confidential  
12 including source code from both ViaSat and Acacia.
- 13 r. Exhibit 26 attached thereto, which is a copy of the Opening Report of Dr.  
14 Marwan Hassoun, dated October 27, 2017, and contains information that  
15 ViaSat has designated as Confidential Source Code – Attorneys’ Eyes Only  
16 Information. Exhibit 26 contains discussion of ViaSat’s alleged trade secrets  
17 and Acacia’s accused products as well as technical information that ViaSat  
18 has identified as confidential including source code from both ViaSat and  
19 Acacia.
- 20 s. Exhibit 27 attached thereto, which is a copy of excerpts of the condensed  
21 transcript of the August 8, 2017 deposition of Lawrence S. Pellach, and  
22 contains information that Acacia has designated as Highly Confidential –  
23 Attorneys’ Eyes Only. Exhibit 27 contains discussion of ViaSat’s alleged  
24 trade secrets and Acacia’s accused products as well as technical and business  
25 information that Acacia has identified as confidential.
- 26 t. Exhibit 28 attached thereto, which is a copy of an email from Jane Smith,  
27 dated August 1, 2010, entered as Deposition Exhibit No. 329, and contains  
28 information that ViaSat has designated as Highly Confidential – Attorneys’



1 Eyes Only. Exhibit 28 contains ViaSat's technical and business information  
2 related to the CORD project.

3 u. Exhibit 29 attached thereto, which is a copy of an email from Ted Gammell  
4 to Bhupen Shah, dated September 23, 2009, with an attached draft of the IP  
5 Core Development and License Agreement, and contains information that  
6 Acacia has designated as Highly Confidential – Attorneys' Eyes Only.

7 Exhibit 29 contains confidential business negotiations and business  
8 information of the parties that Acacia has identified as confidential.

9 v. Exhibit 30 attached thereto, which is a copy of excerpts of the condensed  
10 transcript of the July 26, 2017 deposition of Russell Fuerst with attached  
11 errata sheet, and contains information that ViaSat has designated as Highly  
12 Confidential – Attorneys' Eyes Only. Exhibit 30 contains discussion of  
13 ViaSat's alleged trade secrets and Acacia's accused products as well as  
14 business and financial information that ViaSat has identified as confidential.

15 w. Exhibit 33 attached thereto, which is a copy of excerpts of the condensed  
16 transcript of the December 8, 2017 deposition of Dr. Krishna Narayanan  
17 with attached errata sheet, and contains information that ViaSat has  
18 designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 33  
19 contains discussion of ViaSat's alleged trade secrets and Acacia's accused  
20 products as well as technical information that ViaSat and Acacia have  
21 identified as confidential.

22 x. Exhibit 34 attached thereto, which is a copy of an email from Bhupen Shah  
23 to Russell Fuerst, dated October 21, 2009, with an attached draft of the IP  
24 Core Development and License Agreement, and contains information that  
25 Acacia has designated as Highly Confidential – Attorneys' Eyes Only.  
26 Exhibit 34 contains confidential business negotiations and business  
27 information of the parties that Acacia has identified as confidential.  
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- 1 y. Exhibit 35 attached thereto, which is a copy of an email from Russell Fuerst  
2 to Bhupen Shah, dated October 20, 2009, with an attached draft of the IP  
3 Core Development and License Agreement, and contains information that  
4 Acacia has designated as Highly Confidential – Attorneys’ Eyes Only.  
5 Exhibit 35 contains confidential business negotiations and business  
6 information of the parties that Acacia has identified as confidential.
- 7 z. Exhibit 36 attached thereto, which is a copy of excerpts of the condensed  
8 transcript of the July 27, 2017 deposition of Ted Gammell, and contains  
9 information that ViaSat has designated as Highly Confidential – Attorneys’  
10 Eyes Only. Exhibit 36 contains discussion of ViaSat’s alleged trade secrets  
11 as well as business and financial information that ViaSat has identified as  
12 confidential.
- 13 aa. Exhibit 37 attached thereto, which is a copy of ViaSat’s Trade Secret  
14 Identification, dated October 21, 2016, and contains information that ViaSat  
15 has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 37  
16 contains discussion of ViaSat’s alleged trade secrets which constitute  
17 technical information that ViaSat has identified as confidential.
- 18 bb. Exhibit 38 attached thereto, which is a copy of excerpts of the condensed  
19 transcript of the December 6, 2017 deposition of Marwan Hassoun, Ph.D. ,  
20 and contains information that ViaSat and Acacia have designated as  
21 Confidential Source Code – Attorneys’ Eyes Only Information. Exhibit 38  
22 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused  
23 products as well as technical information that ViaSat and Acacia have  
24 identified as confidential including the parties’ source code.
- 25 cc. Exhibit 39 attached thereto, which is a copy of the Supplemental Report of  
26 Professor Krishna Narayanan, Ph.D., dated November 8, 2017, and contains  
27 information that ViaSat has designated as Highly Confidential – Attorneys’  
28 Eyes Only. Exhibit 39 contains discussion of ViaSat’s alleged trade secrets



1 and Acacia's accused products as well as technical information that ViaSat  
2 and Acacia have identified as confidential.

3 dd. Exhibit 40 attached thereto, which is a copy of excerpts of the condensed  
4 transcript of the December 4, 2017 deposition of Paul R. Prucnal, Ph.D.  
5 with attached errata sheet, and contains information that Acacia has  
6 designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 40  
7 contains discussion of Acacia's alleged trade secrets and ViaSat's accused  
8 products as well as technical information that Acacia has identified as  
9 confidential.

10 ee. Exhibit 41 attached thereto, which is a copy of excerpts of the condensed  
11 transcript of the December 12, 2017 deposition of Ivan Djordjevic, Ph.D.,  
12 and contains information that ViaSat has designated as Highly Confidential –  
13 Attorneys' Eyes Only. Exhibit 41 contains discussion of Acacia's alleged  
14 trade secrets and ViaSat's accused products as well as technical information  
15 from both parties that ViaSat has identified as confidential.

16 Acacia will electronically file a public version of Acacia's Memorandum with the  
17 confidential information redacted. Therefore, this request is narrowly tailored to  
18 protect only the information that is confidential.

19 While the public generally enjoys the right of access to court records, the  
20 public's right to access to court records "is not absolute," and documents are properly  
21 filed under seal where disclosure would harm a party by forcing it to disclose trade  
22 secrets or other valuable confidential proprietary business information. *See, e.g., Nixon*  
23 *v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Elec. Arts, Inc.*, 298 F. App'x  
24 568, 569-70 (9th Cir. 2008).

25 "Where a party shows that its documents contain sources of business  
26 information that might harm its competitive standing, the need for public access to the  
27 records is lessened." *Algarin v. Maybelline, LLC*, No. 12-3000, 2014 WL690410, at \*3  
28 (S.D. Cal. Feb. 21, 2014). Courts must ensure that their records are not used "as

sources of business information that might harm a litigant's competitive standing.”  
*Nixon*, 435 U.S. at 598; *see also Bauer Bros. LLC v. Nike, Inc.*, No. 09500, 2012  
 WL1899838, at \*3-4 (S.D. Cal. May 24, 2012) (granting motion to seal non-public  
 financial data); *Davis v. Soc. Serv. Coordinators, Inc.*, No. 10-023 72, 2012 WL 1940677, at  
 \*3 (E.D. Cal. May 29, 2012) (noting that “[g]ood cause to seal is generally found where  
 the disclosure of proprietary information could cause a party competitive injury”).

Good cause to file under seal exists because the information Acacia seeks to seal  
 has been identified as confidential by Acacia, ViaSat, and third parties. Publicly filing  
 the information would prejudice Acacia, ViaSat, and third parties by revealing technical  
 and financial information that could be used for competitive advantage outside of this  
 case. Therefore, there is good cause to seal this information.

### CONCLUSION

For the foregoing reasons, Acacia respectfully requests that the Court seal the  
 portions of Acacia's Memorandum and the documents listed above. A Proposed  
 Order will be emailed to [efile\\_benitez@casd.uscourts.gov](mailto:efile_benitez@casd.uscourts.gov) and  
[efile\\_adler@casd.uscourts.gov](mailto:efile_adler@casd.uscourts.gov).

Dated: January 26, 2018

Respectfully Submitted,

WOLF, GREENFIELD & SACKS, P.C.

By: /s/ Michael A. Albert

Michael A. Albert

Hunter D. Keeton

Stuart V. C. Duncan Smith

Attorneys for Defendant and Counter  
 Claimant Acacia Communications, Inc.

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**CERTIFICATE OF SERVICE**

I certify that today I served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for ViaSat, Inc., per the agreement of counsel.

Date: January 26, 2018 /s/ Michael A. Albert  
Michael A. Albert